



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 30, 1995

Mr. Tim James
District Attorney
145th Judicial District
101 West Main
Nacogdoches, Texas 75961

OR95-917

Dear Mr. James:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 32940.

On October 13, 1994, your office refused to honor a request for information under the Open Records Act made by Ms. Cynthia Henley. Ms. Henley requested, on behalf of her client, Mr. Marvin Froman, certain records pertaining her client's prosecution and conviction of the aggravated sexual assault of a child. You did not request a decision from this office regarding Ms. Henley's request until April 10, 1995. Consequently, you failed to request a decision within the ten days required by section 552.301(a) of the Government Code.¹

Section 552.301(a) requires a governmental body to release requested information or to request a decision from the attorney general within ten days of receiving a request for information the governmental body wishes to withhold. When a governmental body fails to request a decision within ten days of receiving a request for information, the information at issue is presumed public. Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston*

¹We recognize your contention that, because Ms. Henley's request was address to and received by County Court at Law Judge Jack Yarborough, the request was never properly received by your office. Because we resolve your request for an open records decision on other grounds, we need not address this issue.

Chronicle Publishing Co., 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling interest to withhold the information to overcome this presumption. See *Hancock* at 381.

You have not made compelling arguments as to why the information at issue should not be released. However, we note that a government body must withhold information, despite its failure to timely request a decision under section 552.301 of the Government Code if some other law makes the information confidential. See Open Records Decision No. 150 (1977) at 2 (and authorities cited therein). Although the attorney general ordinarily will not raise an exception that might apply but that the governmental body has failed to claim, see Open Records Decision No. 325 (1982) at 1, we will raise section 552.101 of the Government Code because a governmental body's improper release of confidential information constitutes a misdemeanor. See Gov't Code § 552.352. Section 552.101 protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

Chapter 34 of the Family Code concerns, among other things, reports of sexual abuse of a child to local law enforcement agencies. Section 34.08(a) of the Family Code provides:

Except as provided in Subsections (b) and (c) of this section, the reports, records, and working papers used or developed in an investigation made under this chapter are confidential and may be disclosed only for purposes consistent with the purposes of this code under regulations adopted by the investigating agency.

Subsections (b) and (c) relate to the disclosure of records concerning an investigation of an adopted child to the adoptive parents, prospective adoptive parents, or to the child upon reaching adulthood. Neither subsection is applicable to the current request.

Because you have not cited any specific regulation that your office has adopted with regard to the release of this type of information, we assume that no such regulation exists. Given that assumption, the records at issue are confidential pursuant to section 34.08(a) of the Family Code. See Open Records Decision No. 440 (1986) at 2. Accordingly, your office must withhold the requested records.²

²We do not address here any due process right the criminal defendant may have to this information. Rather, this ruling concerns only the right of the requestor or her client to these records as members of the general public under the Open Records Act.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Government Section

LRD/RWP/rho

Ref: ID# 32940

Enclosures: Submitted records

cc: Ms. Cynthia Russell Henley
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(w/o enclosures)